



# State Water Resources Control Board



**Linda S. Adams**  
Secretary for  
Environmental Protection

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ [www.waterrights.ca.gov](http://www.waterrights.ca.gov)

**Arnold Schwarzenegger**  
Governor

**SEP 22 2008**

FIRST CLASS AND ELECTRONIC MAIL

Mr. Cory Scott  
Klamath Licensing Manager  
PacifiCorp Energy  
825 NE Multnomah, Suite 1500  
Portland, OR 97232  
[Cory.Scott@PacifiCorp.com](mailto:Cory.Scott@PacifiCorp.com)

Dear Mr. Scott:

### **RE: REQUEST FOR RESUBMISSION OF WATER QUALITY CERTIFICATION**

This letter acknowledges receipt of your September 10, 2008 letter regarding our request that PacifiCorp resubmit an application for water quality certification to the State Water Resources Control Board (State Water Board) by September 30, 2008. State Water Board Executive Director Dorothy Rice has asked me to respond.

Your September 10, 2008 letter did not clearly state whether PacifiCorp intends to resubmit its application for water quality certification. For the reasons stated in our previous letter, the State Water Board reiterates its requests that PacifiCorp resubmit an application for water quality certification by September 30, 2008. This date represents almost four months of delay in anticipation of what was claimed to be an imminent settlement agreement. Furthermore, the submission of a new application for certification does not preclude the parties from continuing to discuss settlement during the period required to prepare environmental documentation for and consider action on the application for certification. The State Water Board looks forward to receiving an application for certification no later than September 30, 2008.

Your letter also states that the State Water Board's August 22, 2008 letter "seems to pre-judge" the water quality impacts of the project. The State Water Board has not made a decision on the merits of water quality certification for the Klamath Hydroelectric Project, but as part of the procedures for certification the State Water Board must undertake at least a preliminary analysis in order to address preliminary and procedural issues. In particular, in determining the appropriate response to actions or requests by the applicant that will have the effect of delaying water quality certification, the State Water Board should consider any potential threat to water quality from the delay. If it appears based on the evidence available to the State Water Board at the time that the project may be contributing to conditions of pollution or nuisance, the State Water Board

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should be much more concerned about the delay than if continued operation under annual licensing does not raise any water quality concerns.

The statements in our August 22, 2008 letter concerning the ongoing water quality and beneficial use impacts of project operations reflect a preliminary analysis of a wide range of information sources, including: PacifiCorp's previously submitted applications for water quality certification; PacifiCorp's application for FERC relicensing; PacifiCorp's responses to supplemental information requests; the FERC Environmental Impact Statement; the trial-type hearing on federal mandatory conditions; and numerous studies and analyses submitted to the FERC record.

Contrary to your implication, the conclusion that further delays in the State Water Board's water quality certification proceedings should be avoided, and the consideration of information relevant to water quality in reaching that conclusion, is not a "pre-judgment." The State Water Board understands that the hydroelectric project is one of many factors, both natural and anthropogenic, that have resulted in a severely impaired basin. We have reached no final decision on the degree of responsibility of PacifiCorp's hydroelectric facilities for the conditions on the Klamath and in PacifiCorp's reservoirs. Nor has the State Water Board made a final decision as to what conditions must be attained to assure consistency with water quality standards and other appropriate requirements of state law. The State Water Board will continue its evaluation of the current record as well as of any additional information PacifiCorp or other interested persons develop.

The State Water Board looks forward to seeing the results of your ongoing 2008 reservoir management plan studies, and staff are in the process of replying to your recent communications regarding those studies and additional information staff requested in June. As your letter notes, these studies will provide important information, and the State Water Board will look to them in determining whether the reservoir management techniques can mitigate project impacts. The State Water Board also requests again the results and analyses of your 2007 reservoir management plan studies.

Your letter of September 10, 2008 also requests that even after PacifiCorp submits a new application for water quality certification the State Water Board further delay initiation of the (California Environmental Quality Act (CEQA) process until PacifiCorp staff meet with State Water Board staff. The State Water Board reiterates that staff remain available to discuss issues related to your water quality certification application. As we have made clear in past discussions, beginning the CEQA scoping process is the next step in moving forward on PacifiCorp's application, and this process will move in tandem with and inform our ongoing review of the record. Because the next steps in the process are clear, and because of the need for prompt action discussed above, there is no reason to further delay the CEQA process in order to discuss how the State Water Board intends to proceed. Such a discussion is appropriate to have in the context of CEQA scoping.

Mr. Cory Scott

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If you have any questions or concerns, please contact Jennifer Watts at (916) 341-5397 or [jwatts@waterboards.ca.gov](mailto:jwatts@waterboards.ca.gov), or Marianna Aue at (916) 327-4440 or [maue@waterboards.ca.gov](mailto:maue@waterboards.ca.gov).

Sincerely,



Leslie F. Grober, Manager  
Hearings and Special Programs Section

cc: Kimberly D. Bose  
Secretary, Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

FERC Service List for Project 2082

Robert E. Donlan, Partner  
Ellison Schnieder & Harris  
2015 "H" Street  
Sacramento, CA 95814-3109  
[red@eslawfirm.com](mailto:red@eslawfirm.com)